**THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU**

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**WRIT PETITION NO :3875 OF 1997**

**AND**

**WRIT PETITION NO.4028 OF 1997**

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**DATED: 07-10-2005**

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**W.P.No.3875 of 1997**

Between:

1. Kuppam Harinath Reddy,

son of Late K.R.Krishna Reddy,

and four others ……Petitioners

AND

1. The Inams Deputy Tahsildar,

Chittoor District at Tirupathi

and ten others …..Respondents

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**W.P.No.4028 of 1997**

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Between:

1. Kuppam Harinath Reddy,

son of Late K.R.Krishna Reddy,

and four others ……. Petitioners

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AND

1. The Inams Deputy Tahsildar,

Chittoor District at Tirupathi

and fourteen others …….. Respondents

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**THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU**

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**WRIT PETITION NO :3875 OF 1997**

**AND**

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**COMMON ORDER:**

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These petitions are filed seeking a Writ of Prohibition restraining the Additional Subordinate Judge, Tirupati, from proceeding with O.S.No.292 of 1996 and O.S.No.2 of 1997 on his file, on the ground that those suits are not maintainable in view of Section 14 of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (" the Act").

2. Heard the learned Counsel for the petitioners and the learned Assistant Government Pleader for Revenue and the learned Counsel appearing for the unofficial respondents at length.

3. Both the learned Counsel for both side relied on the observations in **Thirumala Tirupati Devasthanams V. Thallappaka Ananthacharyulu** in support of the contentions raised by them. The main contention of the learned Counsel for the petitioners is that since the learned Additional Subordinate Judge, Tirupathi, in two other suits, where the plaintiffs therein, as in the present suits, claimed that they purchased the lands covered by the suits from Chilukuru Seshamma, held that he has no jurisdiction to try the suits and since in Thallappaka Ananthacharyulu case (1 supra) also the learned Additional Subordinate Judge, after remand from the Apex Court held that he has no jurisdiction to entertain the suit in view of Section 14 of the Act, it is clear that the learned Additional Subordinate Judge, Tirupathi, has no jurisdiction to try the two suits in respect of which this petition is filed and since no useful purpose would be served in driving the petitions to fight litigation in a Court which, *prima facie,* has no jurisdiction to try the suits petitioners are entitled to the relief sought.

4. The contention of the learned Assistant Government Pleader, and the learned Counsel for unofficial respondents (plaintiffs in the suits) is that since the appeals against the finding that the trial Court has no jurisdiction, (in the suits relied on by the learned Counsel for the petitioners) are pending in this Court, it cannot be said that those findings have reached a finality, and in any event since those findings do not operate as resjudicata and since question whether any fraud or misrepresentation is played on the plaintiffs in the suits or not is a question, which has to be decided on the basis of the evidence to be adduced, granting a writ of prohibition may not arise.

5. Since Section 14 of the Act does not completely oust the jurisdiction of a civil Court and since Civil Court does have jurisdiction to entertain the suit in cases where a decision from the settlement officer was obtained by misrepresentation, fraud or a collusion, question whether any misrepresentation, fraud or collusion are played or not is a pure question of fact, and so the same cannot be decided in a writ petition.

6. As held by the Apex Court in Thallappaka Ananthacharyulu case (1 supra), a writ of prohibition is normally issued only when the Court subordinate to the High Court or Tribunal proceeds to act without, or in excess of its, jurisdiction or in violation of the rules of natural justice, or acts, under a law which is itself ultra vires or unconstitutional, and/or if it acts in contravention of fundamental rights. Since it is not the case of the petitioners in these petitions that any rules of natural justice or fundamental rights are violated, or that the second respondent is acting ultra vires his powers, or is functioning unconstitutionally, and since CivilCourt has jurisdiction to entertain the suit when fraud, misrepresentation or collusion is established, and will not have jurisdiction to entertain the suit if fraud, misrepresentation or collusion are not established, and since fraud, misrepresentation or collusion, are all questions of fact, which cannot be decided by this court petitioners cannot be granted the relief sought in these petitions. If the petitioners feel that the issue to be decided in these two suits are the same as the issues involved in O.S.No.302 of 1996 and O.S.No.306 of 1996, the remedy open to them is to approach the trial Court under Section 10 of C.P.C. or to file a petition to try the issue relating to the jurisdiction as a preliminary issue.

7. Therefore, these writ petitions are dismissed, granting liberty to the petitioners to file a petition to try the issue relating to jurisdiction as a preliminary issue, which shall decide by the learned trial Judge on merits as expeditiously as possible. Parties shall bear their own costs.

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**C.Y. SOMAYAJULU, J.**

DATED: 07th October, 2005

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